



4510-29-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. **D-11679**]

Notice of Amendment to Proposed Exemption

Sammons Enterprises, Inc. Employee Stock Ownership Plan (the ESOP)

Located in Dallas, TX

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Notice of amendment to proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of an amendment to a proposed individual exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and the Internal Revenue Code of 1986, as amended (the Code). The proposed transactions involve Sammons Enterprises, Inc. (Sammons). The proposed exemption, if granted, would affect the ESOP for which Sammons is the sponsor, and the participants and beneficiaries of the ESOP.

TEMPORARY NATURE OF EXEMPTION: This exemption, if granted, will

expire at the earlier of (i) the first day of the first fiscal year of Sammons next following the fiscal year in which falls the fifth anniversary of the date of grant of the exemption; and (ii) the first day upon which the ESOP fails to own at least 99% of the issued and outstanding shares of Sammons.

WRITTEN COMMENTS AND HEARING REQUESTS: All interested persons are invited to submit written comments and/or requests for a hearing on the proposed exemption within forty five (45) days from the date of the publication of this Federal Register Notice. Comments and requests for a hearing should state: (1) the name, address and telephone number of the person making the comment or the request for a hearing and (2) the nature of the person's interest in the proposed exemption and the manner in which the person would be adversely affected by the proposed exemption. A request for a hearing must also state the issues to be addressed at the requested hearing and include a general description of the evidence to be presented at the requested hearing.

ADDRESSES: All written comments and requests for a public hearing concerning the proposed exemption should be sent to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N-5700, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 202010, Attention: Application No. D-11679. Interested persons are also invited to

submit comments and/or hearing requests to the Employee Benefits Security Administration by e-mail or FAX. Any such comments or requests should be sent either to: moffitt.betty@dol.gov, or by FAX to (202) 219-0204 by the end of the scheduled comment period. The application for exemption and the comments received will be available for inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW, Washington, DC 20210.

WARNING: If you submit written comments or hearing requests, do not include any personally-identifiable or confidential business information that you do not want to be publicly-disclosed. All comments and hearing requests are posted on the Internet exactly as they are received, and they can be retrieved by most Internet search engines. The Department will make no deletions, modifications or redactions to the comments or hearing requests received, as they are public records.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693-8546. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This document contains a notice of amendment to a proposed individual exemption from the

restrictions of ERISA 406(a)(1)(A) and (D), 406(b)(1), and 406(b)(2), and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D) and (E) of the Code. The proposed exemption has been requested by GreatBanc Trust Company (GreatBanc), the independent fiduciary for the ESOP, pursuant to ERISA section 408(a) and Code section 4975(c)(2), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this proposed exemption is being issued solely by the Department.

On November 14, 2011, the Department of Labor (the Department) published in the Federal Register (76 FR 70503) a notice of proposed exemption (the Notice) for a transaction involving the ESOP. The entity that requested the exemption, GreatBanc, the independent fiduciary for the ESOP, as well as the ESOP's sponsor, Sammons, have now requested a clarification with respect to the conditions that appeared in the Notice.

Condition (f) of the Notice reads: "(f) Shares of Sammons stock are held in an ESOP suspense account, and are allocated

each year to each eligible ESOP participant at the maximum level permitted under the Code;" and Representation (f) in Paragraph 16 of the Summary of Facts and Representations of the Notice reads the same way.

GreatBanc represents that this statement was likely the product of the following representation made in the original application submitted to the Department and repeated in Paragraph 5 of the Notice: "Although the ESOP is not leveraged, under a special structure established pursuant to Section 664(g) of the Code, the shares acquired from the [Sammons] charitable remainder trust are held in an ESOP suspense account, and are currently allocated each year to each eligible ESOP participant at the maximum level permitted under Code Section 664(g)(7), i.e., 25% of compensation (up to a maximum allocation of \$45,000.)"

GreatBanc confirms that the representations in the exemption application concerning the level of current allocations to ESOP participants are entirely accurate. Participants received the maximum allocations permitted under the Code for the 2010 Plan year (the first Plan year for which Code Section 664(g)(7) applied to the ESOP), and will receive the maximum level of allocations for the 2011 Plan year as well. It was not, however, the intention of GreatBanc nor Sammons to represent to the Department, nor to offer as a condition for the granting of an

exemption, that the ESOP would provide the maximum permitted allocations to ESOP participants during each Plan year for which the exemption proposed herein would be in effect, but rather to represent that the allocations made to ESOP participants would at all times be made in accordance with the applicable provisions of Code Section 664(g).

The Department has accepted this request for clarification by GreatBanc and Sammons and has accordingly amended the Notice so that condition (f) now reads: "(f) Shares of Sammons stock are held in an ESOP suspense account, and are allocated each year to each eligible ESOP participant in accordance with the applicable provisions of the Code;" and the Department notes that Representation 16, subsection (f) of the Notice is similarly amended.

NOTICE OF AMENDMENT TO PROPOSED EXEMPTION

The Department of Labor (the Department) is considering granting an exemption under the authority of section 408(a) of the Act in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A) and (D), 406(b)(1), and 406(b)(2) of the Act, and the sanctions resulting from the application of section

4975 of the Code, by reason of section 4975(c)(1)(A), (D) and (E) of the Code, shall not apply to the personal holding company consent dividend election (the Consent) with respect to Sammons Enterprises, Inc. (Sammons), by the trustee of the ESOP, provided that the following conditions are satisfied:

(a) The trustee of the ESOP is an independent, qualified fiduciary (the I/F), acting on behalf of the ESOP, which determines prior to entering into the transaction that the transaction is feasible, in the interest of, and protective of the ESOP and the participants and beneficiaries of the ESOP;

(b) Before the ESOP enters into the proposed transaction, the I/F reviews the transaction, and determines whether or not to approve the transaction, in accordance with the fiduciary provisions of the Act;

(c) The I/F monitors compliance with the terms and conditions of this proposed exemption, as described herein, and ensures that such terms and conditions are at all times satisfied;

(d) Sammons provides to the I/F, in a timely fashion, all information reasonably requested by the I/F to assist it in making its decision whether or not to approve the transaction;

(e) The consent dividend will represent no more than two percent (2%) of the ESOP's assets in any taxable year within

the timeframe of the exemption proposed herein;

(f) Shares of Sammons stock are held in an ESOP suspense account, and are allocated each year to each eligible ESOP participant in accordance with the applicable provisions of the Code;

(g) All of the requirements of section 565 of the Code are met with respect to the Consent; and

(h) All shareholders of Sammons are requested to consent to the dividend in the manner prescribed under section 565 of the Code.

NOTICE TO INTERESTED PERSONS: The applicant represents that notice to interested persons will be provided by first class mail within 15 days of the publication of this Notice of Amendment to Proposed Exemption in the Federal Register. This notification to interested persons will include both a copy of the November 14, 2011 Notice and a copy of this Notice of Amendment to Proposed Exemption.

Signed at Washington, DC, this 27th day of March, 2012.

Lyssa E. Hall
Acting Director of Exemption
Determinations
Employee Benefits Security
Administration
U.S. Department of Labor

[FR Doc. 2012-7703 Filed 03/29/2012 at 8:45 am; Publication Date:
03/30/2012]